

# **EXHIBIT S**

December 18, 2018 Email Exchange between  
Ronald Green and Christopher Austin

**From:** F. Christopher Austin [caustin@weidemiller.com](mailto:caustin@weidemiller.com)  
**Subject:** Re: FCA-w-0822-SWITCH.30L - Interim Status Report  
**Date:** December 18, 2018 at 4:17 PM  
**To:** Ron Green [rdg@randazza.com](mailto:rdg@randazza.com)  
**Cc:** Brianna Show [bshow@weidemiller.com](mailto:bshow@weidemiller.com), Tenny Fauver [tjf@randazza.com](mailto:tjf@randazza.com), Marc Randazza [mjr@randazza.com](mailto:mjr@randazza.com), Alex Shepard [ajs@randazza.com](mailto:ajs@randazza.com)

Ron:

We are still on track. I just have not had as much time as expected, since I returned late yesterday from a visit with my son in Idaho.

I've got a call into Epiq, but no response. In order to expedite things, I would like some latitude to potentially use a different provider agreed to by all. Switch is not opposed to other reputable providers. One they have heard good reports on is Open Text. They seem fairly sizable as well. Have you heard of them? Or others your client would be okay with?

I'll look into this more tomorrow. I know you are out but I assume you will still have email, and I'll see if I can set something up that works for you.

Chris Austin  
Sent from my iPad

On Dec 18, 2018, at 4:01 PM, Ron Green <[rdg@randazza.com](mailto:rdg@randazza.com)> wrote:

Dear Chris:

I presume that we are not speaking with Epiq today. It is my last day in the office until after Christmas, and I believe that you told me you were out of the office after today as well. I do request that you provide me some indication regarding where you guys stand. Is your client still interested in informal eDiscovery, or should I let MTech know that we need to start engaging in standard discovery and looking for an expert? As you know, our expert disclosure deadline is February 5, 2019. If we do not start moving forward with Epiq very soon, I will need to start working on expert discovery as soon as I return from the holidays.

Thanks.

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**Ronald D. Green\* | Randazza Legal Group, PLLC**  
2764 Lake Sahara Drive | Suite 109 | Las Vegas, NV 89117  
Tel: 702-420-2001 | Email: [rdg@randazza.com](mailto:rdg@randazza.com)

---

\* Licensed to practice law in Nevada.

On Dec 17, 2018, at 3:25 PM, Ron Green <[rdg@randazza.com](mailto:rdg@randazza.com)> wrote:

Are we speaking with Epiq tomorrow?

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**Ronald D. Green\* | Randazza Legal Group, PLLC**  
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---

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On Dec 13, 2018, at 3:23 PM, F. Christopher Austin <[caustin@weidemiller.com](mailto:caustin@weidemiller.com)> wrote:

Ron:

I'll try to set something up for Tuesday.

**F. Christopher Austin**  
**Weide & Miller, Ltd.**

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---

**From:** Ron Green <[rdg@randazza.com](mailto:rdg@randazza.com)>  
**Sent:** Thursday, December 13, 2018 3:14 PM  
**To:** F. Christopher Austin <[caustin@weidemiller.com](mailto:caustin@weidemiller.com)>  
**Cc:** Brianna Show <[bshow@weidemiller.com](mailto:bshow@weidemiller.com)>; Tenny Fauver <[tjf@randazza.com](mailto:tjf@randazza.com)>; Marc Randazza <[mjr@randazza.com](mailto:mjr@randazza.com)>; Alex Shepard <[ajs@randazza.com](mailto:ajs@randazza.com)>  
**Subject:** Re: FCA-w-0822-SWITCH.30L - Interim Status Report

Alright. As a reminder, I am only in the office Monday and Tuesday next week. I will be on a plane for the majority of Wednesday. I have limited availability Thursday and Friday because I will mostly be doing stuff with my family.

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On Dec 13, 2018, at 3:05 PM, F. Christopher Austin <[caustin@weidemiller.com](mailto:caustin@weidemiller.com)> wrote:

We are, but it will have to be next week. This one got ahead of me.

**F. Christopher Austin**  
**Weide & Miller, Ltd.**

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---

**From:** Ron Green <[rdg@randazza.com](mailto:rdg@randazza.com)>  
**Sent:** Thursday, December 13, 2018 2:26 PM  
**To:** F. Christopher Austin <[caustin@weidemiller.com](mailto:caustin@weidemiller.com)>  
**Cc:** Brianna Show <[bshow@weidemiller.com](mailto:bshow@weidemiller.com)>; Tenny Fauver <[tjf@randazza.com](mailto:tjf@randazza.com)>; Marc Randazza <[mjr@randazza.com](mailto:mjr@randazza.com)>; Alex Shepard <[ajs@randazza.com](mailto:ajs@randazza.com)>  
**Subject:** Re: FCA-w-0822-SWITCH.30L - Interim Status Report

Chris:

What's the status on this? Are we moving forward?

Ron Green  
Randazza Legal Group, PLLC  
Las Vegas, NV  
Sent from my iPhone

On Dec 7, 2018, at 2:46 PM, F. Christopher Austin <[caustin@weidemiller.com](mailto:caustin@weidemiller.com)> wrote:

Thanks Ron. I'll confirm with Switch and if they agree seek to set up a teleconference for you and me with Enig next week

for you and me with Epiq next week.

Chris

**F. Christopher Austin**  
**Weide & Miller, Ltd.**

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---

**From:** Ron Green <[rdg@randazza.com](mailto:rdg@randazza.com)>  
**Sent:** Friday, December 07, 2018 2:44 PM  
**To:** F. Christopher Austin <[caustin@weidemiller.com](mailto:caustin@weidemiller.com)>  
**Cc:** Brianna Show <[bshow@weidemiller.com](mailto:bshow@weidemiller.com)>; Tenny Fauver <[tjf@randazza.com](mailto:tjf@randazza.com)>; Marc Randazza <[mjr@randazza.com](mailto:mjr@randazza.com)>; Alex Shepard <[ajs@randazza.com](mailto:ajs@randazza.com)>  
**Subject:** Re: FCA-w-0822-SWITCH.30L - Interim Status Report

Chris:

It was a pleasure speaking with you today. To confirm our conversation, my clients do not wish to pay for half of the proposed eDiscovery. However, if communications with Epiq (or whichever provider we choose) are limited to you and me, then their concerns about unilateral communications disappear and no liquidated damages provision would be necessary. They would prefer that you and I contact Epiq together. Finally, we would like some indication regarding the keywords your client intends to propose, as well as some guideline regarding your client's willingness to dismiss the case if it does not find anything of interest in the eDiscovery.

Thanks, and I'll talk to you next week.

---

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On Nov 13, 2018, at 3:20 PM, F. Christopher Austin  
<[caustin@weidemiller.com](mailto:caustin@weidemiller.com)> wrote:

Thanks

**F. Christopher Austin**  
**Weide & Miller, Ltd.**

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**From:** Ron Green <[rdg@randazza.com](mailto:rdg@randazza.com)>  
**Sent:** Tuesday, November 13, 2018 2:28 PM  
**To:** F. Christopher Austin <[caustin@weidemiller.com](mailto:caustin@weidemiller.com)>  
**Cc:** Brianna Show <[bshow@weidemiller.com](mailto:bshow@weidemiller.com)>; Tennyson Fauver <[tjf@randazza.com](mailto:tjf@randazza.com)>; Marc Randazza <[mjr@randazza.com](mailto:mjr@randazza.com)>; Alex Shepard <[ajs@randazza.com](mailto:ajs@randazza.com)>  
**Subject:** Re: FCA-w-0822-SWITCH.30L - Interim Status Report

Well, it solves the issue for me. I will let you know shortly what my clients say.

On Tue, Nov 13, 2018 at 2:14 PM F. Christopher Austin <[caustin@weidemiller.com](mailto:caustin@weidemiller.com)> wrote:

Okay. Then I'm hoping limiting the communications to you and me (in which I have no problem with you contacting them even if I'm not available) will solve that issue.

Thanks,  
Chris

**F. Christopher Austin**  
**Weide & Miller, Ltd.**

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**From:** Ron Green <[rdg@randazza.com](mailto:rdg@randazza.com)>  
**Sent:** Tuesday, November 13, 2018 2:07 PM  
**To:** F. Christopher Austin <[caustin@weidemiller.com](mailto:caustin@weidemiller.com)>  
**Cc:** Brianna Show <[bshow@weidemiller.com](mailto:bshow@weidemiller.com)>; Tenny Fauver <[tjf@randazza.com](mailto:tjf@randazza.com)>; Marc Randazza <[mjr@randazza.com](mailto:mjr@randazza.com)>; Alex Shepard <[ajs@randazza.com](mailto:ajs@randazza.com)>  
**Subject:** Re: FCA-w-0822-SWITCH.30L - Interim Status Report  
**Importance:** High

I will send this proposal to my clients. However, as far as I know, my clients do not distrust Epiq. They simply do not want your client unilaterally communicating with Epiq.

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---

\* Licensed to practice law in Nevada.

On Nov 13, 2018, at 2:03 PM, F. Christopher Austin  
<[caustin@weidemiller.com](mailto:caustin@weidemiller.com)> wrote:

Ron:

If we are going to do informal discovery, it has to be simple, yet fair and comprehensive, or we might as well just do formal discovery. I've reviewed your October 23<sup>rd</sup> letter. It's not bad, but it's clear your client distrusts Epiq. Here's my thoughts:

1. Why don't you identify a reputable 3<sup>rd</sup> Party image provider (ESI Provider) agreeable to your client. Unless there is some red flag, I suspect Switch will agree. We sign the service agreement on behalf of our clients and split the fee 50/50, paid through our firms. If you want to amend the service agreement (or I do), no problem. We negotiate the changes.
2. The ESI Provider images the hard drives and returns them to your clients.
3. I send you keywords to be searched. We meet and resolve any issues regarding them and jointly submit them to the ESI Provider.
4. The ESI Provider runs the search and sends us all the results. I'll promptly let you know (likely within a week) how long we expect it will take us to review the results. If the results are clean, we let you know and dismiss/settle the case.
5. If we identify matters we believe evidence misappropriation, I'll tell you, and we discuss in the context of settlement discussions if you would like (which would then include why we think they do). If not, or if at any time either party feels discussions are not progressing, we revert to the formal process (serve discovery, etc.).

I see no reason for artificial deadlines, as we have a formal scheduling order. My informal goal is to resolve this before Christmas, so I still have time to go through formal discovery if necessary. If you feel we are taking too long at any point, you can jump into the formal process. Same for us.

Give me a call to discuss when you have a moment.

Chris

**F. Christopher Austin**  
**Weide & Miller, Ltd.**

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---

**From:** F. Christopher Austin  
**Sent:** Tuesday, November 13, 2018 11:51 AM  
**To:** 'Ron Green' <[rdg@randazza.com](mailto:rdg@randazza.com)>  
**Cc:** Brianna Show <[bshow@weidemiller.com](mailto:bshow@weidemiller.com)>; Tenny Fauver <[tjf@randazza.com](mailto:tjf@randazza.com)>; Marc Randazza <[mjr@randazza.com](mailto:mjr@randazza.com)>; Alex Shepard <[ajs@randazza.com](mailto:ajs@randazza.com)>  
**Subject:** RE: FCA-w-0822-SWITCH.30L - Interim Status Report

Ron:

Fine. I'll hold off on serving them. I was trying to be agreeable. Apparently, I've been confused about the service issue, and since my client asked me about the status, my confusion prevailed. No one is trying to gain an advantage here.

Chris

**F. Christopher Austin**  
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---

**From:** Ron Green <[rdg@randazza.com](mailto:rdg@randazza.com)>  
**Sent:** Tuesday, November 13, 2018 11:42 AM  
**To:** F. Christopher Austin <[caustin@weidemiller.com](mailto:caustin@weidemiller.com)>  
**Cc:** Brianna Show <[bshow@weidemiller.com](mailto:bshow@weidemiller.com)>; Tenny Fauver <[tjf@randazza.com](mailto:tjf@randazza.com)>; Marc Randazza <[mjr@randazza.com](mailto:mjr@randazza.com)>; Alex Shepard <[ajs@randazza.com](mailto:ajs@randazza.com)>  
**Subject:** Re: FCA-w-0822-SWITCH.30L - Interim Status Report

Chris:

You did not learn that we did not receive the Requests for Production via email until "the other day." We discussed this in our Reply in Support of Motion to Stay Discovery, which was filed in June. In August, Sam, Anne-Marie, you,

and I also discussed it at the early case conference, where you acknowledged that we had not received them and said that you would re-serve them after the conference. However, you subsequently agreed not to serve them again until we knew whether the case could be informally resolved. This is all in writing. I am really growing frustrated that this is still an issue. I agree with you that it should not be; however, given that your client misrepresented that we were "months late" responding to discovery just last week, it concerns me that you guys keep insisting that you served discovery on us in March.

I am also unsure why you are serving the Requests for Production on us today if you want to resume talks regarding eDiscovery. While you only agreed to hold off on service until after the settlement meeting in Boston, the purpose of the proposed informal eDiscovery was to reduce litigation costs to both parties. Forcing us to respond to Requests for Production now would frustrate that purpose. So, if you do serve Requests on us today, I will have to talk to my clients regarding whether they would still be interested in engaging in informal eDiscovery.

---

**Ronald D. Green\*** | **Randazza Legal Group, PLLC**  
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Tel: 702-420-2001 | Email: [rdg@randazza.com](mailto:rdg@randazza.com)

---

\* Licensed to practice law in Nevada.

On Nov 13, 2018, at 11:24 AM, F. Christopher Austin <[caustin@weidemiller.com](mailto:caustin@weidemiller.com)> wrote:

Ron:

I haven't had a chance to discuss deadlines. I'm happy to work with you. My primary goal is to see if we cannot get the informal discovery process back on line. I'll follow-up with you on that later today.

As to discovery service: Until I spoke with you the other day, I did not know you had not received them when we emailed them. That is not an issue to battle over, so I'll serve them again today, and we'll count service from today.

Chris

**F. Christopher Austin**  
**Weide & Miller, Ltd.**

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**From:** Ron Green <[rdg@randazza.com](mailto:rdg@randazza.com)>  
**Sent:** Monday, November 12, 2018 3:17 PM  
**To:** F. Christopher Austin  
<[caustin@weidemiller.com](mailto:caustin@weidemiller.com)>  
**Cc:** Brianna Show  
<[bshow@weidemiller.com](mailto:bshow@weidemiller.com)>; Tenny Fauver  
<[tjf@randazza.com](mailto:tjf@randazza.com)>  
**Subject:** Re: FCA-w-0822-SWITCH.30L -  
Interim Status Report

Hey Chris. I'm following up to see if you had discussed deadlines and logistics with Switch yet.

Additionally, while I think we are on the same page with regard to Switch's Requests for Production, I wanted to be sure. We do not consider the Requests to have been served upon Defendants. The only time we have been provided with a copy of them was in regards to Switch's Opposition to our Motion to Stay Discovery. At this point, I assume you're holding off on serving them until you know whether your client wishes to pursue a mutually agreeable eDiscovery framework or just commence standard discovery.

While discovery deadlines were just extended, the clock continues to tick, and we'd appreciate follow up regarding eDiscovery as soon as possible.

Thanks a lot.

---

**Ronald D. Green\*** | **Randazza Legal Group, PLLC**  
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---

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On Nov 8, 2018, at 2:12 PM, F. Christopher Austin  
<[caustin@weidemiller.com](mailto:caustin@weidemiller.com)>  
wrote:

Ron:

No need to file a motion for a protective order. They misunderstood the date of service which was obtained from me, because I did not know you had not received the discovery when we originally propounded it. I have a teleconference with them later today to assess whether we will be using a formal discovery process going forward or whether we can salvage the informal process. I'll then follow-up with you to reach agreement on deadlines and logistics.

Chris

**F. Christopher Austin**  
**Weide & Miller, Ltd.**

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**From:** Ron Green  
<[rdg@randazza.com](mailto:rdg@randazza.com)>  
**Sent:** Thursday, November 08, 2018 1:37 PM  
**To:** F. Christopher Austin  
<[caustin@weidemiller.com](mailto:caustin@weidemiller.com)>  
**Cc:** Brianna Show  
<[bshow@weidemiller.com](mailto:bshow@weidemiller.com)>;  
Tenny Fauver  
<[tjf@randazza.com](mailto:tjf@randazza.com)>  
**Subject:** Re: FCA-w-0822-SWITCH.30L - Interim Status Report

report

I think the only remaining issue is your client's false insistence that we did not timely respond to written discovery and that they're expecting a response by November 19. Are they backing off of that, or do I need to file for a protective order? I'm really hoping it's the former.

---

**Ronald D. Green\*** | **Randazza Legal Group, PLLC**  
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On Nov 7, 2018, at 4:35 PM, F. Christopher Austin  
<[caustin@weidemiller.com](mailto:caustin@weidemiller.com)> wrote:

Thank you. We will file.

**F. Christopher Austin**  
**Weide & Miller, Ltd.**

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**From:** Ron Green  
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**Sent:** Wednesday, November 07, 2018 4:33 PM

**To:** F. Christopher Austin  
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**Cc:** Brianna Show  
<[bshow@weidemiller.com](mailto:bshow@weidemiller.com)>; Tenny Fauver  
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**Subject:** Re: FCA-w-0822-SWITCH.30L - Interim Status Report

Just a few small revisions/corrections. If this is okay with you, you can affix my e-signature and file.

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\* Licensed to practice law in Nevada.

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